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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC LANGFORD DANIELS,

Defendant and Appellant.

B288717

(Los Angeles County
Super. Ct. No.NA034357)

APPEAL from an order of the Superior Court of
Los Angeles County, Marcelita V. Haynes, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

This is the third appeal by Eric Langford Daniels, aka Eric Andrews, arising out of his conviction for unlawful possession of a firearm by a felon. We previously affirmed appellant's conviction in 1999. In 2015, we denied appellant's appeal from an order denying his petition to recall his sentence under the Three Strikes Reform Act of 2012. (Pen. Code, § 1170.126.)¹

Appellant now appeals from the trial court's denial of his motion for a hearing under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). His counsel filed an opening brief that raised no issues and requested independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

On July 24, 2018, we sent appellant a letter informing him of the nature of the brief that had been filed and advising him that he had 30 days to file a supplemental brief setting forth issues he wished this court to consider. Appellant has not filed a response with the court.

I. Background

We relate the background facts as set forth in our prior opinion: On November 2, 1997, police conducted a traffic stop of a car in which appellant was a passenger. Appellant complied with the officers' request to exit the car but then ran from the scene. While appellant was running, a sheer black nylon sock containing a handgun fell from the waistband of his sweatpants. Appellant was apprehended and charged with unlawful

¹All further statutory references herein are to the Penal Code unless otherwise indicated.

possession of a firearm by a felon (former Penal Code § 12021, subd. (a)).²

At his jury trial, appellant testified that the gun did not belong to him. According to appellant, the driver dropped the gun into his lap as police approached the vehicle, and he put it in his waistband because he was afraid to discard it while the police were approaching. The jury found appellant guilty of unlawfully possessing the firearm. At a subsequent bench trial, the trial court found true allegations that appellant suffered three prior strike convictions (1993 convictions for robbery, attempted robbery, and burglary). The trial court sentenced appellant to 25 years to life in prison, pursuant to the Three Strikes Law. In 1999, we affirmed his conviction on direct appeal, modifying his sentence only to accurately reflect his precommitment credits and obligatory parole revocation fine.

In 2012, the trial court denied appellant's petition for recall of his sentence pursuant to section 1170.126. We affirmed that denial in an unpublished opinion, *People v. Daniels* (Aug. 3, 2015, B259284) (nonpub. opn.).

II. *Present appeal*

In 2017, appellant filed a motion seeking a hearing pursuant to *Romero*. He requested that the court exercise its discretion to strike two of the three prior strikes (attempted robbery and burglary) in the interest of justice. He further

²The Legislature repealed former Penal Code section 12021, subdivision (a)(1) effective January 1, 2011, and recodified the statute without substantive change as Penal Code section 29800, subdivision (a)(1), operative January 1, 2012. (See Stats. 2010, c. 711, §§ 6, 10; Pen. Code, § 29800, Law Revision Commission Comments.)

argued that a *Romero* hearing was warranted because his three prior convictions “arise out of the same operative facts and circumstances, and occurred at the same time, and the robbery could not have occurred without commit[t]ing the burglary,” citing *People v. Vargas* (2014) 59 Cal.4th 635 (*Vargas*).³

The court denied appellant’s motion on January 8, 2018. The court found that, although his prior strikes arose out of a single incident, “each count of robbery and attempted robbery allege a separate victim.” Thus, under *Vargas, supra*, 59 Cal.4th 635, “the convictions qualify as two prior strikes.” The court also noted that appellant filed a petition for writ of habeas corpus on this issue, which was denied on January 27, 2015. Finally, the court found, contrary to appellant’s claim, that his trial counsel did make a *Romero* motion at the sentencing hearing and that the trial court denied it.

Appellant timely appealed.

We find no abuse of discretion. (See *People v. Carmony* (2004) 33 Cal.4th 367, 374 [holding that “a court’s failure to dismiss or strike a prior conviction allegation is subject to review under the deferential abuse of discretion standard”].) Appellant’s reliance on *Vargas* is misplaced. In *Vargas*, the defendant was convicted “of two different crimes (robbery and carjacking) that were based on her commission of the same act (forcibly taking the victim’s car).” (*Vargas, supra*, 59 Cal.4th at p. 645.) The court distinguished cases, such as the one before it, involving “multiple

³At the time of his sentencing, appellant’s trial counsel requested that the court strike two of the strikes. The People opposed, noting that the current incident occurred within six weeks of appellant’s release from prison on the prior convictions, and that the priors involved use of a gun.

criminal convictions stemming from the commission of a single act,” from cases involving “multiple criminal acts (albeit committed in a single course of conduct).” (*Id.* at p. 648.) In the former circumstance, but not the latter, the court found “the nature and circumstances of defendant’s prior strike convictions demonstrate the trial court was required to dismiss one of them because failure to do so would be inconsistent with the spirit of the Three Strikes law.” (*Id.* at p. 649.) Vargas presented one of these “extraordinary cases,” as her prior offenses involved a single qualifying act. (*Ibid.*)

Here, there is very limited information in the record regarding the underlying bases for appellant’s prior convictions. However, according to appellant’s own summary, he and a companion went to the victims’ motel room, robbed one victim at gunpoint, and attempted to rob a second victim, who had no money. It was therefore not an abuse of discretion for the trial court to conclude that the prior convictions arose from multiple criminal acts, and thus to decline to strike the prior strike convictions.

III. *Wende* review

In addition, we have independently reviewed the entire record. We are satisfied that no arguable issues exist and appellant has received effective appellate review of the judgment entered against him. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-279; *People v. Kelly* (2006) 40 Cal. 4th 106, 123-124.)

The order is affirmed.

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COLLINS, J.

We concur:

MANELLA, P. J.

WILLHITE, J.